

Attachment 4

U.S. EPA-Region 5 General Mitigation Plan Requirements Elgin Community College

Mitigation Plan (33 C.F.R. § 332.4(c)/40 C.F.R. § 230.94(c))

A mitigation plan is required for all forms of compensatory mitigation, whether permittee-responsible mitigation, mitigation banks, or in-lieu fee mitigation projects.

Preparation and Approval of Mitigation Plans

Permittee-Responsible Mitigation

Individual Permits

- The permittee must prepare a draft mitigation plan and submit it to the District Engineer (DE) for review.
- Then the permittee must prepare a final mitigation plan, which must be approved by the DE prior to issuing the individual permit.
- The final mitigation plan must be incorporated into the individual permit by reference.
- The final plan must include the 12 components listed below.
- The level of detail of the plan should be commensurate with the impacts.
- The DE may determine that it would be more appropriate to address any of the 12 components listed below as permit conditions, instead of components of a mitigation plan.

General Permits

- The DE may approve a conceptual or detailed mitigation plan.
- A final mitigation plan incorporating the 12 components listed below, at a level of detail commensurate with the impacts, must be approved by the DE before the permittee commences work in waters of the U.S.
- The DE may determine that it would be more appropriate to address any of the 12 components listed below as permit conditions, instead of components of a mitigation plan.

Using Mitigation Banks or In-Lieu Fee Programs:

Individual Permits

For permittees meeting their mitigation obligations by securing credits from approved mitigation banks or in-lieu fee programs, their mitigation plans only need to include components 4 (baseline

information) and 5 (determination of credits), and the name of the mitigation bank or in-lieu fee program to be used.

General Permits

For permittees meeting their mitigation obligations by securing credits from approved mitigation banks or in-lieu fee programs, their mitigation plans only need to include components 4 (baseline information) and 5 (determination of credits) and either the name of the mitigation bank or in-lieu fee program to be used or a statement indicating that a mitigation bank or in-lieu fee program will be used (contingent upon approval by the DE).

Mitigation banks and in-lieu fee programs must prepare a mitigation plan including the 12 components listed below for each mitigation project site.

12 Components of a Compensatory Mitigation Plan

1. **Objectives.** A description of the resource type(s) and amount(s) that will be provided, the method of compensation (restoration, establishment, preservation, etc.), and how the anticipated functions of the mitigation project will address watershed needs.

2. **Site selection.** A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and/or preservation at the mitigation project site.

3. **Site protection instrument.** A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the mitigation project site.

4. **Baseline information.** A description of the ecological characteristics of the proposed mitigation project site, in the case of an application for a DA permit, the impact site. This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other characteristics appropriate to the type of resource proposed as compensation. The baseline information should include a delineation of waters of the United States on the proposed mitigation project site. A prospective permittee planning to secure credits from an approved mitigation bank or in-lieu fee program only needs to provide baseline information about the impact site.

5. **Determination of credits.** A description of the number of credits to be provided including a brief explanation of the rationale for this determination.

- For permittee-responsible mitigation, this should include an explanation of how the mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.

- For permittees intending to secure credits from an approved mitigation bank or in-lieu fee program, it should include the number and resource type of credits to be secured and how these were determined.

6. Mitigation work plan. Detailed written specifications and work descriptions for the mitigation project, including: the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water; methods for establishing the desired plant community; plans to control invasive plant species; proposed grading plan; soil management; and erosion control measures. For stream mitigation projects, the mitigation work plan may also include other relevant information, such as planform geometry, channel form (e.g., typical channel cross-sections), watershed size, design discharge, and riparian area plantings.

7. Maintenance plan. A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.

8. Performance standards. Ecologically-based standards that will be used to determine whether the mitigation project is achieving its objectives.

9. Monitoring requirements. A description of parameters monitored to determine whether the mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting monitoring results to the DE must be included.

10. Long-term management plan. A description of how the mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resource, including long-term financing mechanisms and the party responsible for long-term management.

11. Adaptive management plan. A management strategy to address unforeseen changes in site conditions or other components of the mitigation project, including the party or parties responsible for implementing adaptive management measures.

12. Financial assurances. A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the mitigation project **will** be successfully completed, in accordance with its performance standards.

Other information. The DE may require additional information as necessary to determine the appropriateness, feasibility, and practicability of the mitigation project.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|--------------------------------------|---|-------------------------------|
| IN THE MATTER OF |) | ADMINISTRATIVE CONSENT ORDER |
| |) | |
| Elgin Community College District 509 |) | DOCKET NO. V-404-AOC-13- |
| Elgin, Kane County, Illinois, |) | |
| |) | PROCEEDING UNDER SECTION |
| Respondent |) | 309(a) OF THE CLEAN WATER ACT |
| |) | 33 U.S.C. § 1319(a) |
| |) | |

Administrative Consent Order

1. The U.S. Environmental Protection Agency (EPA) is issuing this Consent Order to Elgin Community College, District 509, Elgin, Kane County, Illinois (Respondent) under the authority of Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue such orders to the Regional Administrator of EPA Region 5, who has redelegated this authority to the Director of the Water Division, EPA, Region 5.

Statutory and Regulatory Background

2. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits the discharge of pollutants into navigable waters by any person except in compliance with, *inter alia*, a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

3. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers ("Corps"), to issue permits for the discharge of dredged or fill material into navigable waters.

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" as an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

5. The term "discharge of pollutants" is defined as "any addition of any pollutant to navigable waters from any point source...." 33 U.S.C. § 1362(12).

6. A "point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

7. A "pollutant" is defined as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the waters of the United States, including the territorial seas.

9. 40 C.F.R. §§ 230.3(s) and 232.2 define "waters of the United States" to include: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) all other waters, such as intrastate lakes, rivers, streams (including intermittent streams), sloughs or wetlands, the use, degradation or destruction of which could affect interstate or foreign commerce; (iv) tributaries to such waters; and (v) wetlands adjacent to such waters or their tributaries.

10. "Wetlands" are defined as "those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions." 40 C.F.R. § 232.2(f).

11. Under Section 309(a) of the CWA, 33 U.S.C. § 1319(a), the Administrator of EPA may issue an order to comply to any person who is violating Section 301 of the CWA.

Findings

12. Respondent owns the property located in Section 21, Township 41 N, Range 8 E, in the City of Elgin, Kane County, Illinois (the "Site") (Attachment 1).

13. Between June 2009 and continuing through March 2012, Respondent, using backhoes, excavators, bulldozers and other earth moving and excavation equipment dredged and filled approximately 5.52 acres of wetlands abutting Otter Creek at the Site (Attachment 2).

14. Otter Creek is a tributary to the Fox River, which is a traditional navigable water (Attachment 3).

15. The wetlands referenced in Paragraph 13, above, Otter Creek, and Fox River are "waters of the United States" as defined at 40 C.F.R. § 232.2(q) and "navigable waters", as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

16. Respondent did not have and presently does not have a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of pollutants referenced in Paragraphs 13, above, into wetlands and other waters of the United States.

17. The Respondent is a "person" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. The machinery referenced in Paragraph 13, above, constitutes a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. The discharged dredged materials referenced in Paragraph 13, above, constitutes "pollutants" within the meaning of the definitions set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The placement of the material in the wetlands referenced in Paragraph 13, above, constitutes a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

21. Each discharge by Respondent of pollutants into navigable waters without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

22. Each day the discharged material remains in the wetland without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Compliance Order on Consent Requirements

23. Respondent must immediately cease further discharges of fill material into the wetlands on the Site, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. § 1251, et seq.

24. Within 60 days from the effective date of this Order, Respondent must submit a "Wetland Mitigation Plan" that addresses and is consistent with the "12 Components of a Compensatory Mitigation Plan" (Attachment 4). The Wetland Mitigation Plan must include:

(A) Wetland creation, enhancement or restoration at the Site that totals 16.95 acres at the Site through creation, restoration and/or enhancement, including:

(i) A workplan to implement on-site wetland creation or restoration of approximately 12.73 acres, wetland enhancement of approximately 3.03 acres and a minimum wetland buffer establishment of 1.19 acres, as shown in the plan entitled, “ECC Campus: Potential Wetland Mitigation Option” (6-19-14) (Attachment 5). This plan will include restoration of pre-existing hydrology by installing a drain tile valving system, as shown in the plan entitled, “ECC Spartan Drive Parcel: Existing Agricultural Drain Tile Investigation Plan Including Existing Drain Tile Abandonment and Modification Proposal” (5/13/14) (Attachment 6);

(ii) A delineation of the mitigation project site that identifies baseline ecological characteristics of the project site, and sufficient information verifying the plan entitled, “ECC Campus: Potential Wetland Mitigation Option” (Attachment 5);

(iii) A five-year monitoring and maintenance plan for the onsite wetland creation and enhancement necessary to control and manage invasive species and ensure the continued viability of the resource once initial construction is completed;

(iv) Description of the restrictive covenant or similar legal instrument that will be used to ensure the protection of the mitigation project site in perpetuity, and schedule for finalization and recording of such instrument with the Kane County Auditor and Recorder;

(v) Identification of the ecologically-based performance standards that will be used to determine whether the mitigation project is achieving its objectives, including invasive species controls;

(vi) A detailed implementation schedule identifying specific activity dates and milestones for initiating and completing all creation, restoration and/or enhancement, monitoring and protection activities, including but not limited dates for bidding, contract award, notices to proceed with construction initiation and planting, construction and planting completion, and monitoring/inspection reports to the Corps; and

(vii) Other information, planning documents, and descriptions necessary to address the “12 Components of a Compensatory Mitigation Plan” attached as Attachment 4.

(B) A plan to purchase no less than an additional 4 acres of wetland mitigation credits at a Corps-approved mitigation bank. Respondent shall prepare the necessary contractual documents necessary to purchase sufficient wetland mitigation banking at the Blackberry Creek Wetland Mitigation Bank, the Slough Creek Wetland Mitigation Bank, or another wetland mitigation bank approved by the Corps.

25. Within 60 days from the effective date of this Consent Order, Respondent shall submit to the Corps an application for an after-the-fact CWA Section 404 permit pursuant to Regional Permit No. 6 to authorize the dredged and fill materials that remain in place on the condition that Respondent implements and complies with the terms of this Order and the Wetland Mitigation Plan required under Paragraph 24, above. Respondent shall comply with all terms and conditions of the issued CWA Section 404 Permit.

26. Respondent shall allow representatives of EPA or the Corps access to the Site to determine compliance with this Consent Order and the CWA.

27. All submittals required by this Order shall be provided to:

Leesa Beal, Chief
Regulatory Branch
U.S. Army Corps of Engineers
Chicago District
231 South LaSalle Street, Suite 1500
Chicago, Illinois 60604

Keith Wozniak/Michael Machaelek
Regulatory Branch
U.S. Army Corps of Engineers
Chicago District
231 South LaSalle Street, Suite 1500
Chicago, Illinois 60604

and

David Schulenberg
Senior Enforcement Officer
U.S. EPA, Region 5
Water Division (WW-16J)
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

General Provisions

28. This Consent Order does not affect Respondent's responsibility to comply with the CWA or other federal, state and local laws.

29. This Consent Order does not restrict EPA's authority to enforce the CWA or regulations promulgated pursuant to the CWA, or to seek appropriate relief, including penalties, under Section 309 of the CWA, 33 U.S.C. § 1319, for Respondent's violation of the CWA or regulations promulgated pursuant to the CWA.

30. Respondent neither admits nor denies the factual allegations and findings in this Consent Order, but stipulates that EPA has jurisdiction over the subject matter of this Order and agrees to the terms of this Order.

31. Respondent waives all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

32. Failure to comply with this Consent Order may subject Respondent to penalties of up to \$37,500 per day for each violation under Section 309 of the CWA, 33 U.S.C. § 1319 and 40 C.F.R. Part 19.

33. Respondent may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Respondent fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Effluent data (as defined in 40 C.F.R. § 2.302(a)(2)) and standards and limitations (as defined in 40 C.F.R. § 2.302(a)(3)) are not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B.

34. Information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

35. EPA may use the information Respondent submits pursuant to this Consent Order for an administrative, civil judicial or criminal action.

36. This Consent Order shall be effective on the date of signature by the Director of the

Water Division.

In the Matter of:
Elgin Community College
Docket No. V-404-AOC-13-

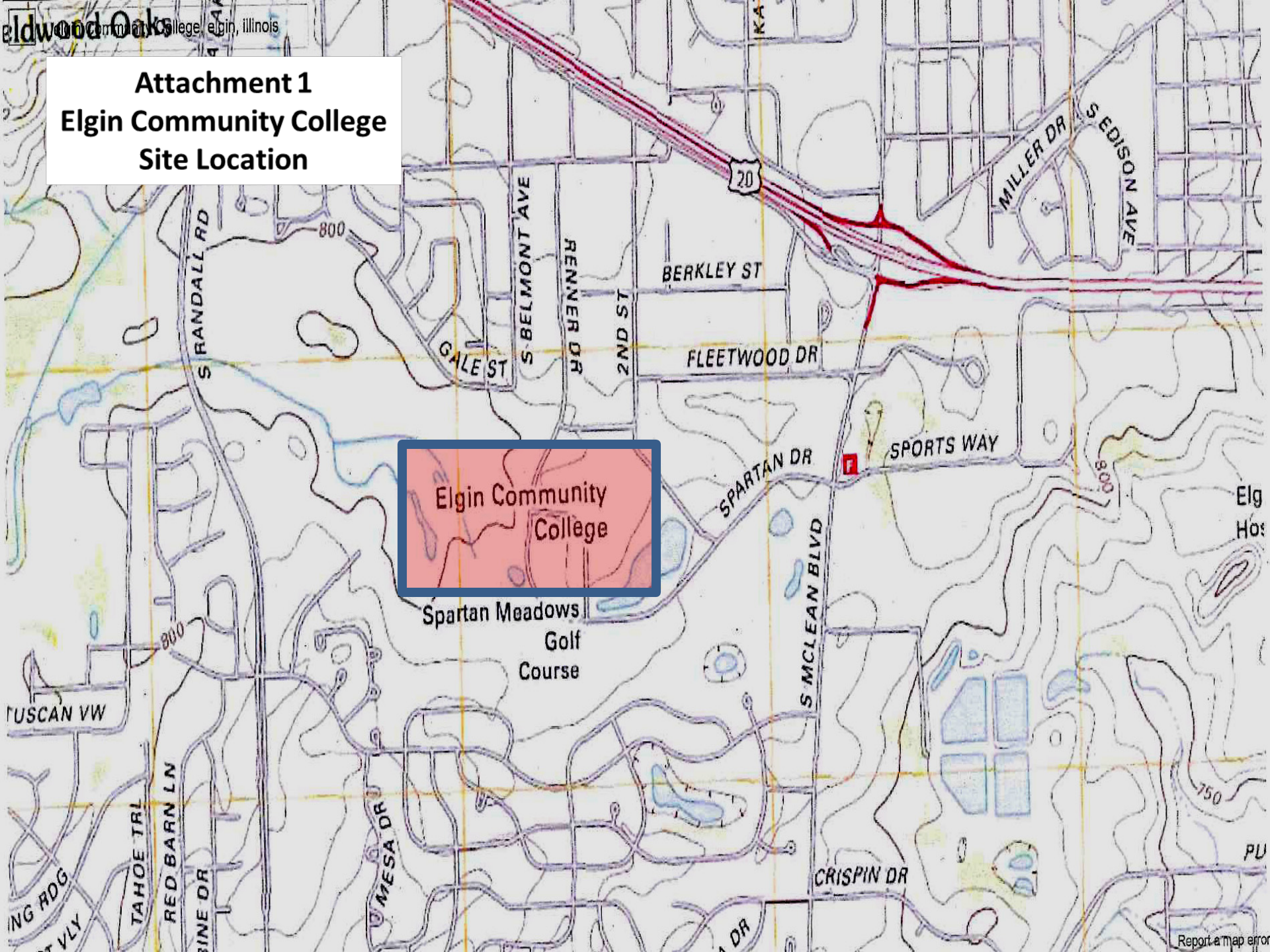
Date:

Dr. David Sam, Ph.D.
President, Elgin Community College

Date

Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection
Agency, Region 5

**Attachment 1
Elgin Community College
Site Location**



Attachment 2
Elgin Community College
Wetland Location

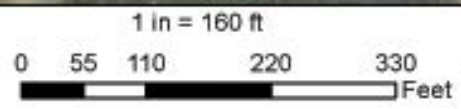


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Attachment 5

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|------------------------------|-----------------------------|
| Wetland Enhancement 3.03 AC. | Wetland Creation- 12.73 AC. |
| Buffer Creation- 1.19 AC. | Open Water- 1.68 AC. |



**ECC Campus
Potential Wetland Mitigation Option**

SECTION NO. 21, ELGIN TWP., KANE COUNTY, IL.

2804 FOWLER RD., ROCKFELL, ILLINOIS PHONE 315-543-6007